



COMMONWEALTH of VIRGINIA

Department of Health

RANDOLPH L. GORDON, M.D., M.P.H.
COMMISSIONER

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July 2, 1997

MEMORANDUM

TO: District Directors

FROM: Randolph L. Gordon, M.D., M.P.H.
Commissioner

SUBJECT: HB 2416/Law-enforcement Officers and Deemed Consent

As you know, the 1997 General Assembly amended Sections 32.1-45.1 of the Code of Virginia to include law-enforcement officers in deemed consent legislation. Each District Director will be my designee for carrying out in his/her district the responsibilities entrusted to me in the bill. Enclosed is a copy of the current amendment. You have previously had a similar responsibility for legislation regarding public safety employees involved in exposure-prone incidents.

Whenever law-enforcement officers are involved in incidents which potentially expose them to bloodborne pathogens, the law allows for the person whose body fluids were involved in the incident to be tested for HIV and Hepatitis B and C. The law also allows for the release of those test results to the officer. The same rights are provided a person exposed to an officer's body fluids.

In situations where the individual whose blood specimen is sought for testing refuses to provide that specimen, the general district court will need to decide whether to issue a testing order. This will apply to law enforcement officers and health care providers. In these situations, the law requires that the court seek your assistance before entering a testing order. In cases where a testing order is issued, the law allows for the counseling to be done by any licensed practitioner or trained counselor.

Testing for HIV and Hepatitis B will be available through the Division of Consolidated Laboratory Services (DCLS). Hepatitis C testing will need to be handled by a private lab.

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I do not expect this law to provide a substantial increase in your work load. If you have any questions or concerns, please call Dr. Grayson Miller at (804) 786-6029, Dr. John Rullan at (804) 786-6261, or Casey W. Riley at (804) 786-6267.

/agc

Enclosure

c Jeff Lake
 James L. Pearson, Ph.D.
 Grayson B. Miller, Jr., M.D.
 John Rullan, M.D.
 Casey Riley

VIRGINIA ACTS OF ASSEMBLY -- 1997 RECONVENED SESSION

REENROLLED

CHAPTER 869

An Act to amend and reenact § 32.1-45.1 of the Code of Virginia, relating to deemed consent to testing and release of test results related to infection with human immunodeficiency virus or hepatitis B or C viruses.

Approved April 2, 1997

[H 2416]

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-45.1 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-45.1. Deemed consent to testing and release of test results related to infection with human immunodeficiency virus or hepatitis B or C viruses.

A. Whenever any health care provider, or any person employed by or under the direction and control of a health care provider, is directly exposed to body fluids of a patient in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the patient whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such patient shall also be deemed to have consented to the release of such test results to the person who was exposed. In other than emergency situations, it shall be the responsibility of the health care provider to inform patients of this provision prior to providing them with health care services which create a risk of such exposure.

B. Whenever any patient is directly exposed to body fluids of a health care provider, or of any person employed by or under the direction and control of a health care provider, in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the patient who was exposed.

C. For the purposes of this section, "health care provider" means any person, facility or agency licensed or certified to provide care or treatment by the Department of Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, or the Department of Social Services, any person licensed or certified by a health regulatory board within the Department of Health Professions except for the Boards of Funeral Directors and Embalmers and Veterinary Medicine or any personal care agency contracting with the Department of Medical Assistance Services.

D. "Health care provider," as defined in subsection C of this section, shall be deemed to include any person who renders emergency care or assistance, without compensation and in good faith, at the scene of an accident, fire, or any life-threatening emergency, or while en route therefrom to any hospital, medical clinic or doctor's office during the period while rendering such emergency care or assistance. The Department of Health shall provide appropriate counseling and opportunity for face-to-face disclosure of any test results to any such person.

E. Whenever any law-enforcement officer is directly exposed to body fluids of a person in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the law-enforcement officer who was exposed. In other than emergency situations, it shall be the responsibility of the law-enforcement officer to inform the person of this provision prior to the contact which creates a risk of such exposure.

F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the law-enforcement officer whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such law-enforcement officer shall also be deemed to have consented to the release of such test results to the person who was exposed. In other than emergency situations, it shall be the responsibility of the law-enforcement officer to inform the person of this provision prior to the contact which creates a risk of such exposure.

infection with human immunodeficiency virus or hepatitis B or C viruses. The law-enforcement officer shall also be deemed to have consented to the release of such test results to the person.

G. For the purposes of this section, "law-enforcement officer" means a person who is both (i) engaged in his public duty at the time of such exposure and (ii) employed by any sheriff's office, any adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or department under the direction and control of the Commonwealth or any local governing body that employs persons who have law-enforcement authority.

H. If the person whose blood specimen is sought for testing refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus or hepatitis B or C viruses, or the employer of such person, may petition the general district court of the county or city in which the person whose specimen is sought resides or resided, or, in the case of a nonresident, the county or city where the health care provider or law-enforcement agency has its principal office, for an order requiring the person to provide a blood specimen or to submit to testing and to disclose the test results in accordance with this section. At any hearing before the court, the person whose specimen is sought or his counsel may appear. The court shall be advised by the Commissioner or his designee prior to entering any testing order. If a testing order is issued, both the petitioner and the person from whom the blood specimen is sought shall receive counseling and opportunity for face-to-face disclosure of any test results by a licensed practitioner or trained counselor.